

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL**

FOR: HEALTH CARE FINANCING ADMINISTRATION

TO: REGIONAL ADMINISTRATOR  
HEALTH CARE FINANCING ADMINISTRATION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

1. TRANSMITTAL NUMBER:

0 1 — 0 0 3

2. STATE:

OHIO

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL  
SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE

04/01/95

01/01/01 HMC

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION: SEC.

1917(c) and (d) of the ACT and OBRA '93, 13611

7. FEDERAL BUDGET IMPACT:

a. FFY \_\_\_\_\_ \$ -0-

b. FFY \_\_\_\_\_ \$ -0-

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 2.6-A page 26  
Supplement 9(a) to Attachment 2.6-A  
pages 1 through 5  
Supplement 10 to Attachment 2.6-A  
page 1

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION  
OR ATTACHMENT (If Applicable):

Attachment 2.6-A page 26  
Supplement 9 to Attachment 2.6-A,  
pages 1, 2, 3, 4, 5, 6c, and 7  
Supplement 10 to Attachment 2.6-A pag  
1

10. SUBJECT OF AMENDMENT:

Provides for the OBRA '93 changes on the treatment of transfers of assets  
for less than fair market value and the treatment of trusts.

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Jacqueline Romer-Sensky

14. TITLE:

Director

15. DATE SUBMITTED:

2/28/01

16. RETURN TO:

Ohio Department of Job and Family  
Services  
30 E Broad St, XXXXXXXXXX 27th FL  
Columbus, OH 43266-0423  
ATTN: Becky Jackson  
Office of Ohio Health Plans

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:

3/7/01

18. DATE APPROVED:

May 14, 2001

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

JANUARY 1, 2001

20. SIGNATURE OF REGIONAL OFFICIAL:

Murice Ford - Acting ARA

21. TYPED NAME:

Cheryl A. Harris

22. TITLE:

Associate Regional Administrator  
Division of Medicaid and Children's Health

23. REMARKS:

**RECEIVED**

MAR 06 2001

DMCH - IL/IN/OH

Citation	Condition or Requirement
1902 (a) (18) and 1902 (f) of the ACT	<p>12. Pre-OBRA 93 Transfer of Resources- Categorically and Medical Needy, Qualified Medicare Beneficiaries, and Qualified Disabled and Working Individuals</p> <p>The agency complies with the provision of section 1917 of the Act with respect to the transfer of resources.</p> <p>Disposal of resources at less than fair market value affects eligibility for certain Services as detailed in <u>Supplement 9 to Attachment 2.6-A.</u></p>
1917(c)	<p>13. Transfer of Assets - All eligibility groups</p> <p>The agency complies with the provisions of section 1917 (c) of the Act, as enacted by OBRA 93, with regard to the transfer of assets.</p> <p>Disposal of assets at less than fair market value affects eligibility for certain services as detailed in <u>Supplement 9 (a) to ATTACHMENT 2.6-A.</u> except in instances where the agency determines that the transfer rules would work an undue hardship.</p>
1917 (d)	<p>14. Treatment of Trusts - All eligibility groups</p> <p>The agency complies with the provisions of section 1917 (d) of the Act, as amended by OBRA 93, with regard to trusts.</p> <p>_____ The agency uses more restrictive methodologies under section 1902 (f) of the Act, and applies those methodologies in dealing with trusts</p> <p>_____ The agency meets the requirements in section 1917 (d) (f) (B) of the Act for use of <u>Miller</u> trusts.</p> <p>The agency does not count the funds in a trust in any instance where the agency determines that the transfer would work an undue hardship, as described in <u>Supplement 10 to ATTACHMENT 2.6-A.</u></p>

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: OHIO

TRANSFER OF ASSETS

1917 (c) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency withholds payment to institutionalized individuals for the following services:

Payments based on a level of care in a nursing facility;

Payments based on a nursing facility level of care in a medical institution;

Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

\_\_\_\_\_ The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905 (a) of the Social Security Act:

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905 (a) (7) );

Home and community care for functionally disabled and elderly adults (section 1905 (a) (22) );

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905 (a) (24).

\_\_\_\_\_ The following other long-term care services for which medical assistance is otherwise under the agency plan:

TN No. 01-003

Supersedes

TN No. 91-28

Approval Date MAY 14 2001

Effective Date 4/1/95 1/1/01

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TRANSFER OF ASSETS

3. Penalty Date—The beginning date of each penalty period imposed for an uncompensated transfer of assets is:

X the first day of the month in which the asset was transferred;

\_\_\_\_\_ the first day of the month following the month of transfer.

4. Penalty Period - Institutionalized Individuals —  
In determining the penalty for an institutionalized individual, the agency uses:

X the average monthly cost to a private patient of nursing facility services in the agency;

\_\_\_\_\_ the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.

5. Penalty Period - Non-institutionalized Individuals—  
The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;

\_\_\_\_\_ imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

TN No. 01-003

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Approval Date \_\_\_\_\_

Effective Date 4/1/95 1/1/01

State: OHIO

TRANSFER OF ASSETS

6. Penalty period for amounts of transfer less than cost of nursing facility care -

- a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency:

X does not impose a penalty;

\_\_\_\_\_ imposes a penalty for less than a full month, based on the proportion of the agency private nursing facility rate that was transferred.

- b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:

X does not impose a penalty;

\_\_\_\_\_ imposes a series of penalties, each for less than a full month.

7. Transfers made so that penalty periods would overlap-

The agency:

\_\_\_\_\_ totals the value of all assets transferred to produce a single penalty period;

X calculates the individual penalty periods and imposes them sequentially.

8. Transfers made so that penalty periods would not overlap-

The agency:

X assigns each transfer its own penalty period;

\_\_\_\_\_ uses the method outlined below:

State: OHIO

TRANSFER OF ASSETS

9. Penalty periods - transfer by a spouse that results in a penalty period for the individual -
- (a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.
  - (b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset-  
When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

☐ The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

☐ For transfers of individual income payments, the agency will impose partial month penalty periods.

☒ For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

☐ The agency uses an alternate method to calculate penalty periods, as described below:

TN No. 01-003  
Supersedes  
TN No. 91-28

Approval Date MAY 14 2001

Effective Date 4/1/95 1/1/01

State: OHIO

### TRANSFER OF ASSETS

11. Imposition of a penalty would work an undue hardship —

The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:

Undue hardship exists when the application of the transfer of asset provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered.

When it is determined that an improper transfer of resources has occurred and the individual was unable to successfully rebut the presumption of an improper transfer, the individual is notified of the right to claim an undue hardship. The individual has the burden of proving that undue hardship exists:

The agency will use the following procedures to determine if undue hardship exists:

- The individual must provide a full written account of why undue hardship exists.
- The individual must submit any pertinent documentary evidence such as legal documents, third party statements and/or medical evidence to support a claim of undue hardship.
- The individual attempts to make the resources available by consulting with legal counsel and it has been determined that the resources no longer exist or that the cost of attempting to retrieve the resources exceeds the value of the resources.
- A court of competent jurisdiction has determined that the resources are unavailable.
- Individuals determined to be incompetent and who do not have another individual to act on their behalf, shall be referred to the county prosecutor or the agency's own legal staff.
- The agency will also refer the individual to the county's or agency's own legal staff if it is determined that the individual's private legal counsel is not acting in the individual's best interest.

Undue hardship does not exist when the application of the transfer of assets provisions merely causes the individual inconvenience but would not put him or her at risk of serious deprivation.

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TN No. 91-28

Revision:

HCFA-PM-95-1  
March 1995

(MB)

SUPPLEMENT 10 to ATTACHMENT 2.6-A  
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: OHIO

The agency does not apply the trust provisions in any case in which the agency determines that such application would work an undue hardship.

The following criteria will be used to determine whether the agency will not count assets transferred because doing so would work an undue hardship:

Undue hardship exists when the application of the trust provisions would deprive the individual of medical care such that his health or his life would be endangered.

When it is determined that applying the trust provisions would endanger the individual's medical care such that his life would be endangered, the individual is notified of the right to claim an undue hardship. The individual has the burden of proving that undue hardship exists.

The agency will use the following procedures to determine if undue hardship exists:

- The individual must provide a full written account of why undue hardship exists.
- The individual must submit any pertinent documentary evidence such as legal documents, third party statements and/or medical evidence to support a claim of undue hardship
- The individual attempts to make the resources available by consulting with legal counsel.

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